

1 TRACY L. WILKISON
United States Attorney
2 SCOTT M. GARRINGER
Assistant United States Attorney
3 Chief, Criminal Division
ELI A. ALCARAZ (Cal. Bar No. 288594)
4 Assistant United States Attorney
Riverside Branch Office
5 3403 Tenth Street, Suite 200
Riverside, California 92501
6 Telephone: (951) 276-6938
Facsimile: (951) 276-6202
7 Email: Eli.Alcaraz@usdoj.gov
FRANCES S. LEWIS (Cal. Bar No. 291055)
8 Assistant United States Attorney
Deputy Chief, General Crimes Section
9 312 North Spring Street, 11th Floor
Los Angeles, California 90012
10 Telephone: (213) 894-4850
Facsimile: (213) 894-0141
11 Email: Frances.Lewis@usdoj.gov

12 Attorneys for Plaintiff
UNITED STATES OF AMERICA
13

14 UNITED STATES DISTRICT COURT

15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,
17 Plaintiff,
18 v.
19 JOHN JACOB OLIVAS,
20 Defendant.

ED CR No. 18-231-JGB

GOVERNMENT'S EX PARTE APPLICATION
FOR AN ORDER ALLOWING DISCLOSURE
OF GRAND JURY TESTIMONY;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF AUSA
ELI A. ALCARAZ

21 Trial Date: November 30, 2021
22 Time: 9:00 a.m.
23 Place: Courtroom of the
Hon. Jesús G.
Bernal
24
25

26 Plaintiff, United States of America, by and through its counsel
27 of record, the United States Attorney for the Central District of
28 California and Assistant United States Attorneys Eli A. Alcaraz and

1 Frances S. Lewis, hereby applies ex parte for an order pursuant to
2 Rule 6(e)(3)(E)(i) of the Federal Rules of Criminal Procedure,
3 authorizing the government to provide defendant's counsel of record
4 with a copy of the grand jury testimony of a witness whom the
5 government may call at trial.

6 The government makes this application because of defendant's
7 need to prepare his case and the disclosure requirements of the
8 Jencks Act, 18 U.S.C. § 3500. This application is based on the
9 attached Memorandum of Points and Authorities and Declaration of Eli
10 A. Alcaraz, the files and records of this case, and such further
11 evidence and argument as may be presented at any hearing on this
12 application.

13 Dated: November 16, 2021

Respectfully submitted,

14 TRACY L. WILKISON
United States Attorney

15 SCOTT M. GARRINGER
16 Assistant United States Attorney
Chief, Criminal Division

17 /s/ Eli A. Alcaraz

18 ELI A. ALCARAZ
19 FRANCES S. LEWIS
Assistant United States Attorneys

20 Attorneys for Plaintiff
21 UNITED STATES OF AMERICA
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

Federal Rule of Criminal Procedure 6(e)(2)(B) provides in relevant part: "Unless these rules provide otherwise, the following persons must not disclose a matter occurring before the grand jury: . . . (vi) an attorney for the government" Fed. R. Crim. 6(e)(2)(B). Rule 6(e)(3)(E) provides in relevant part: "The court may authorize disclosure -- at a time, in a manner, and subject to any other conditions that it directs -- of a grand-jury matter: [] preliminarily to or in connection with a judicial proceeding" Fed. R. Crim. 6(e)(3)(E).

A trial court has "substantial discretion to order or deny release" of a grand jury transcript. United States v. Evans & Associates Construction Co., 839 F.2d 656, 658 (9th Cir. 1988). The starting point for the Court's analysis is the "long-established policy that maintains the secrecy of the grand jury proceedings in the federal courts." Id. (citation omitted). The Supreme Court has established five policy reasons for maintaining the secrecy of grand jury proceedings:

(1) to prevent the escape of those whose indictment may be contemplated; (2) to insure the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to indictment or their friends from importuning the grand jurors; (3) to prevent subornation of perjury or tampering with the witnesses who may testify before [the] grand jury and later appear at the trial of those indicted by it; (4) to encourage free and untrammelled disclosures by persons who have information with respect to the commission of crimes; [and] (5) to protect [an] innocent accused who is exonerated from disclosure of the fact that he has been under investigation, and from the expense of standing trial where there was no probability of guilt.

United States v. Procter & Gamble Co., 356 U.S. 677, 681 n.6 (1958) (internal quotations omitted); see also United States v. Dynavac, Inc., 6 F.3d 1407, 1411 (9th Cir. 1993) (citing Procter & Gamble and

1 Douglas Oil Co. of Calif. v. Petrol Stops Nw., 441 U.S. 211, 219
2 (1979), for the same proposition). In United States Indus., Inc. v.
3 United States District Court, the Ninth Circuit reasoned that a
4 determination of whether disclosure of grand jury material should be
5 made under Rule 6(e) depends on the need of the party seeking
6 disclosure and on the "policy considerations for grand jury secrecy
7 as they apply to the request for disclosure under consideration."
8 345 F.2d 18, 21 (9th Cir. 1965). The court held: "[I]f the reasons
9 for maintaining secrecy do not apply at all in a given situation, or
10 apply to only an insignificant degree, the party seeking the
11 disclosures should not be required to demonstrate a large compelling
12 need." Id.

13 In this instance, the policy considerations requiring secrecy
14 are inapplicable with respect to those witnesses who will testify at
15 trial because the case has been indicted. See Dynavac, 6 F.3d at
16 1412 ("When the grand jury investigation is already terminated and
17 an indictment has been issued, only 'institutional' concerns are
18 implicated by the documentary disclosure.") (citation omitted).
19 Moreover, disclosure of the grand jury testimony to defense counsel,
20 who has requested such disclosure, would be in the interest of
21 justice and allow defense counsel material necessary to the defense
22 in advance of trial.

23 For the foregoing reasons, the government respectfully requests
24 that this Court issue an order authorizing the government to provide
25 defense counsel with a copy of the grand jury testimony of a witness
26 the government may call at trial.